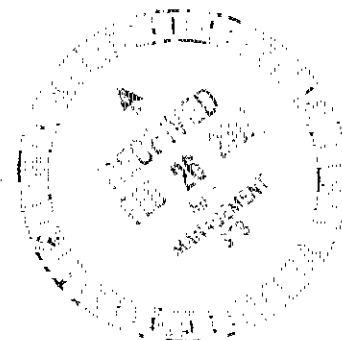


ORIGINAL

Before the
SURFACE TRANSPORTATION BOARD



Ex Parte No. 646 (Sub-No. 1)

2/8 7/6

SIMPLIFIED PROCEDURES FOR RAIL RATE CASES

ENTERED
Office of Proceedings

FEB 26 2007

SUPPLEMENTAL COMMENTS

Part of
Public Record

John D. Fitzgerald,^{1/} for and on behalf of United Transportation Union-General Committee of Adjustment (UTU/GO-386), submits these supplement comments, in accordance with the Board's decision dated and served January 22, 2007.^{2/} UTU/GO-386 filed reply comments on November 30, 2006, and appeared at the hearing conducted January 31, 2007.

A prime concern expressed by UTU/GO-386 is the proposal, first advanced by the Board in its January 22, 2007 decision, for agency staff and the parties to participate in a 20-day mandatory, non-binding mediation period at the commencement of any case. (Decision, 1/22/07, 5).^{3/}

^{1/} General Chairman for United Transportation Union, on lines of BNSF Railway Company, with offices at 400 E. Evergreen Blvd., Vancouver WA 98660.

^{2/} The invitation for supplemental comments was affirmed at the hearing held January 31, 2007.

^{3/} The Board's invitation for comments on this score was preceded by a mediation proposal advanced in initial comments by Association of American Railroads (AAR). Union Pacific Railroad Company (UP), and jointly by CSX Transportation, Inc. (CSXT) and Norfolk Southern Railway Company (NS).

UTU/GO-386 is opposed to mandatory mediation, particularly involving agency staff.

1. The proposed involvement by STB staff in closed-door mediation conferences with the parties consistently has been opposed by UTU/GO-386. See: Ex Parte No. 586, Arbitration--Various Matters Relating to its Use As An Effective Means of Resolving Disputes That Are Subject to the Board's Jurisdiction, UTU/GO-386 Comments, filed Nov. 23, 2001; Ex Parte No. 638, Procedures to Expedite Resolution of Rail Rate Challenges to be Considered Under the Stand-Alone Cost Methodology, UTU/GO-386 Comments, filed Oct. 11, 2002, and Response, filed Feb. 21, 2003; Ex Parte No. 646, Rail Rate Challenges in Small Cases, UTU/GO-386 Statement, filed April 16, 2003, hearing April 22, 22003, at Tr. 104-18, and Statement, filed July 21, 2004.

2. The long-standing practice of the STB and its predecessor, Interstate Commerce Commission (ICC), has not favored such mediation conferences, particularly behind closed doors, with the public excluded.

3. The agency staff has not always conveyed an exemplary record. We point to the irregularities of the Secretary, and the processing of train discontinuance proposals, among other matters. See: U.S. House, Special Subcommittee on Investigations, Comm. on Interstate & Foreign Commerce, Inquiry Into Certain Procedures of the Interstate Commerce Commission, Ser. No. 91-99 (1970).^{4/} Also noteworthy was the inability of agency staff to deal with the overcharge/undercharge scandal, leading to the U.S. House decision

^{4/} In two parts. Hearings were held Jan. 7; June 16, 17, 18, 24, 26; July 9, 29, 31; and Aug. 13, 1970.

almost to defund (terminate) the I.C.C. in 1993, giving the ICC a reprieve by a divided 222-207 vote. However, with the matter still unresolved, the House voted to end the I.C.C. in June 1994, by a lopsided 234-192 vote, and subsequent enactment of Trucking Industry Regulatory Reform Act of 1994 (TIRRA).^{5/}

4. The recent action of the Board in requiring mandatory mediation for major rate cases is not a sound precedent. It had been opposed, and has not proven productive. The fact that a rail carrier and a shipper may not object to staff involvement in "mediation," does not ameliorate the risk to the public. For example, many (if not most) of the major rail rate cases involve coal, the cost of which (including transportation) frequently is passed through to the public via local utilities or distribution companies. Similar pass-through arrangements may govern other bulk commodities, or the products thereof. The potential risk to the public may be heightened by frequent movement of STB staff personnel to and from outside consultant/attorneys positions.

5. The Board recently has drawn attention to so-called staff "mediation" settlement of "small" rate cases. These are highly problematic. In both instances, a complaint had been filed by a "large" shipper against one or more "Class I" carriers, with "settlement" coming only a week or so after filing. See: Docket No. 42093, BP Amoco Chemical Company v. Norfolk Southern Railway Company; Docket No. 42098, Williams Olefins, LLC v. Grand Trunk

^{5/} It may be noted that public dissatisfaction with the former ICC's handling of the undercharge/overcharge controversy, leading to the abolition votes over the ICC in 1993 and 1994, preceded the subsequent 1994 elections and change in Congressional orientation.

Corporation.6/

Respectfully submitted,



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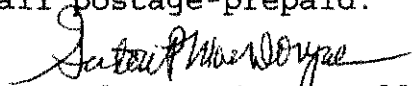
Attorney for United Transportation
Union-General Committee of Adjust-
ment (GO-386).

February 26, 2007

Certificate of Service

I hereby certify I have served a copy of the foregoing upon
all parties of record by first class mail postage-prepaid.

Washington DC


Gordon P. MacDougall

6/ These staff "mediation" settlements were herald with press releases. No. 05-20, Surface Transportation Board Announces Settlement of First "Small," Rate Case (June 24, 2005); No. 07-08, Surface Transportation Board Announces Mediated Settlement in Small Rail Rate-Complaint Case (February 1, 2007).